

BOISE, WEDNESDAY, NOVEMBER 12, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARTIN GONZALEZ,)	
)	
Plaintiff-Appellant,)	
)	
v.)	Docket No. 34534
)	
SHAUN THACKER, individually; TERRI)	
REININGER, individually; and DOES I-V,)	
unknown parties,)	
)	
Defendants-Respondents.)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Honorable James C. Morfitt, District Judge.

Holzer Edwards, Chartered, Boise, for appellant.

Powers Thomson, P.C., Boise, for respondents.

This appeal stems from a district court's award of attorney fees to the defendants in a personal injury action.

In late 2004, while driving an automobile, Shaun Thacker pulled out from a stop sign into the path of a vehicle in which Martin Gonzalez (Gonzalez) was riding, injuring Gonzalez and causing him economic and non-economic damages. In May 2005, Gonzalez sent a demand letter to Shaun Thacker, Terri Reininger, and Does I-V (collectively referred to as Respondents) asking for damages "in excess of \$13,000." In February 2006, Respondents offered to settle Gonzalez's claim for \$18,100. Gonzalez filed a complaint in June 2006, and Respondents answered in August 2006. In February 2007, the case went to a Small Lawsuit Resolution Act (SLRA) evaluator, who found Thacker to be 100% at fault for the accident. The evaluator awarded Gonzalez economic damages in the amount of \$10,735.57 and non-economic damages in the amount of \$2,000, totaling \$12,725.57 altogether. The parties accepted the decision of the evaluator without seeking a trial *de novo*, and in May 2007 the district court entered a judgment for Gonzalez for \$12,725.57. In August 2007, the district court relied on *Gillihan v. Gump*, 140 Idaho 264, 92 P.3d 514, (2004) (*Gillihan II*), to determine that I.C. § 12-120(4) does not preclude an award of attorney fees to defendants in personal injury cases in which the plaintiff's claim for damages does not exceed \$25,000. The district court entered an order granting Respondents "attorney fees under Idaho Code § 12-120(4) as requested" in the amount of \$4,636.50. The district court thereby amended and reduced Gonzalez's judgment to \$8,089.07. Gonzalez timely appeals the award of attorney fees.

BOISE, WEDNESDAY, NOVEMBER 12, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JANICE L. OLSEN,)	
)	
Claimant-Appellant,)	
)	
v.)	
)	
VENCOR, INC., dba EMMETT)	
REHABILITATION AND HEALTHCARE,)	Docket No. 34561
Employer, and AMERICAN HOME)	
ASSURANCE COMPANY, Surety, and)	
STATE OF IDAHO, INDUSTRIAL)	
SPECIAL INDEMNITY FUND,)	
)	
Defendants-Respondents.)	

Appeal from the Industrial Commission of the State of Idaho.

Monroe Law Office, Boise, for appellant.

Bowen & Bailey, LLP, Boise, for respondents Vencor, Inc. and American Home Assurance Company.

Honorable Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent Industrial Special Indemnity Fund.

Janice Olsen was working as a certified nurse's aid at Emmett Rehabilitation and Healthcare (ERH) when she was involved in an industrial accident, which she claims aggravated or accelerated her pre-existing low back condition. Janice filed a worker's compensation claim seeking disability and medical benefits from ERH, its surety, and the Industrial Special Indemnity Fund. The Industrial Commission awarded Janice medical care for a period of approximately one month, but found that her industrial injury did not accelerate or aggravate her pre-existing condition and, as a result, did not award further benefits. Janice appeals the Commission's finding, arguing that it was not based on substantial and competent evidence.

BOISE, WEDNESDAY, NOVEMBER 12, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM KRIS DERUSHE,)	
)	
Petitioner-Appellant,)	
)	
v.)	Docket No. 35116
)	
STATE OF IDAHO,)	
)	
Respondent.)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for Appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for Respondent.

William Kris DeRushé (DeRushé) was convicted of second-degree murder, unlawful possession of a firearm, and a persistent violator enhancement. The Court of Appeals upheld the judgments of conviction and sentences. Subsequently, DeRushé began a civil action against the State by filing a *pro se* petition for post conviction relief, alleging claims of ineffective assistance of counsel, prosecutorial misconduct, and jury misconduct. After a hearing in which DeRushé was assisted by counsel, the district court granted the state's motion for summary disposition concluding there was insufficient evidence to support DeRushé's claims. DeRushé appealed this dismissal.

The Idaho Court of Appeals, who initially heard the appeal, affirmed in part, reversed in part, and remanded the case to the district court. The Court of Appeals found that the district court utilized an incorrect standard in analyzing DeRushé's claim of the ineffective assistance of counsel in respect to the allegation that his attorney did not allow him to testify. The Court held that the state's motion properly alerted DeRushé of his failure to present evidence in regard to his other claims of ineffective counsel. However, the Court held that the state's motion did not include the requisite detail to constitute sufficient notice of summary dismissal in regard to his claim of prosecutorial misconduct. The Idaho Supreme Court granted the State's petition for review.

On appeal, the State argues that the Idaho Supreme Court has never allowed a party in a civil case to challenge on appeal the adequacy of a motion after choosing to respond to the merits of that motion in the district court. In addition, the State contends the Supreme Court has never required a party to state what evidence it believes would defeat its motion in order to meet the particularity requirements under the civil rules.